

## AREA BOARD OF ZONING APPEALS OF TIPPECANOE COUNTY

### MINUTES OF A PUBLIC HEARING

DATE .....September 25, 2002  
TIME.....7:00 P.M.  
PLACE .....CO. OFFICE BLDG.  
20 N. 3<sup>RD</sup> STREET  
LAFAYETTE IN 47901

#### MEMBERS PRESENT

Mark Hermodson  
Ralph Webb  
Ed Weast  
Steve Clevenger  
Miriam Osborn  
Bruce Junius

#### MEMBERS ABSENT

Jean Hall

#### STAFF PRESENT

Sallie Fahey  
Krista Trout  
Joanna Grama, Atty.  
Michelle D'Andrea

The Area Board of Zoning Appeals of Tippecanoe County public hearing was held on the 25<sup>th</sup> day of September 2002, at 7:00 P.M., pursuant to notice given and agenda posted as provided by law.

President Mark Hermodson called the meeting to order.

#### I. APPROVAL OF MINUTES

Bruce Junius moved to approve the minutes of the August 28, 2002 public hearing. Ralph Webb seconded and the motion was carried by voice vote.

#### II. NEW BUSINESS

Sallie Fahey informed the Board that **BZA-1623—DAMIR URMEYEV** had been requested for continuance to the October 23, 2002 meeting, by the petitioners because the required number of letters to interested parties had not been sent. She pointed out on the agenda that **BZA- 1625 ALAN R. & JANET S. KEMPER** had been withdrawn.

Mark Hermodson acknowledged that agenda item #6, **BZA-1626—CROWN COMMUNICATION, INC. BY DAVID GILMAN**, had to be heard before agenda item #3, **BZA-1622—CROWN COMMUNICATION, INC. BY DAVID GILMAN**.

Mark Hermodson informed the Board that Dan Teder had requested the Discussion on Wildcat Wildlife be heard under New Business instead of Administrative Matters.

Dan Teder, P.O. Box 280 Lafayette, IN 47902, informed the Board that he would be representing the Wildcat Wildlife Center during the appeal process. He stated that the appeal should be signed by tomorrow, and filed with the court by Friday {September 27, 2002}. He told the Board that he has been in communication with Robert Mucker, and they have discussed the Board's standing, and are currently working with the County to find another location. He stated that the appeal process should allow sufficient time to approach the County regarding a new location. He assured the Board that he would keep them updated on that process. He said there would not be much going on over the next month, but progress should be made over the next 2-3 months. He stated he would update the Board on the status either by letter or presentation.

Mark Hermodson confirmed that Dan Teder had read the minutes from the August 28, 2002, meeting. He stressed that the Board was sympathetic to the cause but not the location.

Dan Teder replied that he had read the minutes and the Center also realizes the location is not appropriate. He stressed that timing was important to this issue. He stated that Robert Mucker and he were working well together.

Miriam Osborn stressed to Dan Teder to work with the County because the County is willing to work with them.

Dan Teder agreed and said the process has already been started.

Bruce Junius moved that there be incorporated into the public hearing portion of each application to be heard this evening and to become part of the evidence at such hearing, the Unified Zoning Ordinance, the Unified Subdivision Ordinance, the Comprehensive Plan, the Bylaws of the Area Board of Zoning Appeals, the application and all documents filed therewith, the staff report and recommendation on the application to be heard this evening, and responses from the checkpoint agencies. Ralph Webb seconded and the motion carried by voice vote.

Bruce Junius moved to continue **BZA-1623—DAMIR URMEYEV** to the October 23, 2002 Area Board of Zoning Appeals Public Meeting. Ralph Webb seconded and the motion carried by voice vote.

### III. PUBLIC HEARING

#### 1. **BZA-1616—WEST LAFAYETTE COMMUNITY SCHOOL CORPORATION:**

Petitioner is seeking the following two sign variances for Cumberland Elementary school:

1. To allow a 40 sq. ft. freestanding sign for an institutional use in a residential zone instead of the maximum 20 sq. ft. permitted (UZO 4-8-6); and
2. To allow 80 sq. ft. of signage instead of the maximum permitted 57 sq. ft. (UZO 4-8-5);

on property located at 600 Cumberland Ave., in the City of West Lafayette, Wabash 6(SE)23-4.WITH CONDITION. CONTINUED FROM THE AUGUST MEETING SO THAT REQUEST #2 COULD BE AMENDED.

Bruce Junius moved to hear and vote on the above-described request. Ralph Webb seconded.

Sallie Fahey presented the zoning map, aerial photo, a diagram of the proposed sign, and four neighborhood photos. She read the staff report with recommendation of denial for request #1 and with a condition if the variance is approved and recommendation of denial for request #2.

Dan Teder, representing the petitioner, P.O. Box 280 Lafayette, IN 47902, stated Melanie Swift, principal of Cumberland School and Larry Reed of West Lafayette School Corporation, were present. He reiterated the petitioner's request and confirmed that the sign would be more than eight feet from the right-of way. He informed the Board that the school was a very large site which encompassed a school, tennis court, observatory, baseball field, softball field and numerous other activities. He said that currently there is only one fascia sign for the entire location that reads "Cumberland School". He presented a picture to the Board of that sign and pointed out the difficulty of seeing it. He remarked that the sign was more visible 30 years ago when it was put in, but since then the trees have grown in the line of sight. He indicated that the amount of space left to work with was 17 square feet for a monument sign. He said that 17 square feet was not enough space to handle all the different activities the school hosts. He stated that this was an unusual school with over 500 students and numerous sports and extracurricular activities. He explained that the sign needs to be large enough to post the upcoming activities and their schedules. He pointed out that there is no objection from the City of West Lafayette or the surrounding property owners. He notified the Board that he visited the four homes closest to the proposed sign. He relayed that there were no objections from the three people that were home, and they agreed that a larger sign was needed. He stated that the sign would be lighted with a timer, so that it would not be on all night. He informed the Board that the sign at the West Lafayette High School was 8'x4' and they indicated a larger sign would be helpful there as well. He asked the Board for approval.

Melanie Swift, 5900 Acre Lane, Principal of Cumberland Elementary School, stated that the current sign could not easily be seen. She said that the most important issue was to keep the public informed on current events. She mentioned the large number of international students and families. She said that on snow days, she has to stand

outside to direct the people that did not hear it on the news. She stressed that having signage on both sides would be extremely helpful.

Larry Reed, 7440 S. 250 E., West Lafayette 47909, Facilities Director for West Lafayette School Corporation, stated that he was given the task of getting the sign designed and installed. He confirmed that over the last 20 years the growing trees have made it extremely difficult to see the sign, to the point where the school is not even identified. He suggested an alternative to the sign as redesigning the lettering on the actual building. He stated they would like both, and asked for approval.

Mark Hermodson agreed with the need, and wanted confirmation on the size of the high school sign. He referenced the case of the high school's new sign and the safety issues they had in that case.

Dan Teder stated that the high school sign was much taller than the proposed sign for Cumberland.

Larry Reed confirmed that the high school sign was 6 feet tall. He also mentioned that Cumberland has a median, which impedes the view.

Mark Hermodson agreed that the sign was difficult to see. He stated that the lettering on the actual building was not an issue for him. He asked if a 40 square foot sign was needed, or if one the size of the high school's would suffice.

Dan Teder replied that if the Board put that restriction on them, they would be amenable to that, although not their first choice.

Bruce Junius expressed his concern that other schools will follow suit and sign manufactures will try to sell larger and larger signs.

Dan Teder stated that he spoke with Melanie Swift and Larry Reed and they agreed to amend the request to an 8 foot by 4-foot sign.

Bruce Junius asked if all of the neighbor's were aware of the new sign, and if it blended in well.

Dan Teder stated he spoke with three out of four of the neighbors who would face the sign. All three were aware of the sign and approved.

Bruce Junius questioned that there were only four neighbors who would be concerned.

Dan Teder stated those four neighbors have the bulk of the view and that letters to interested parties had been sent out.

Bruce Junius expressed his concern that there would be lots of lights and flashing lights.

Dan Teder explained the sign would have a timer and be turned off around 11 pm. Mark Hermodson asked Bruce Junius if he would like to impose a condition that the lighting be off during certain hours.

Bruce Junius said his concern was not with the timing of the lights, but with the commercial nature of the sign. He posed the question as to how to control signs with flashing neon lights.

Dan Teder stated that the ordinance prohibits flashing lights.

Mark Hermodson confirmed that the ordinance prohibits flashing lights as well as moving letters.

Dan Teder pointed out that the parents of the students had suggested the sign and requested more information on activities.

Sallie Fahey stated that the ordinance permits internal and external lighting, but not exposed bulbs or neon lights. She informed the board that the petition has been changed, in request #1 to 32 square feet, and request #2 to 72 square feet.

The Board voted by ballot 6 to grant –0 to deny approving the amended request #1 in **BZA-1616—WEST LAFAYETTE COMMUNITY SCHOOL CORPORATION.**

The Board voted by ballot 6 to grant –0 to deny approving the amended request #2 in **BZA-1616—WEST LAFAYETTE COMMUNITY SCHOOL CORPORATION.**

<p>2. <b>BZA-1617—VINTAGE APARTMENTS, LLC:</b> Petitioner is seeking a variance to allow a 15' setback instead of the required 25' from the right-of-way line of Littleton St. to construct a six unit apartment building located at 32 N. Salisbury St., in the City of West Lafayette, Wabash 20(SW)23-4. (UZO 4-2-2)<u>CONTINUED FROM THE AUGUST MEETING SO THAT THE REQUEST COULD BE AMENDED.</u></p>	<p><u>REQUEST COULD BE</u></p>
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Bruce Junius moved to hear and vote on the above-described request. Ralph Webb seconded.

Sallie Fahey presented slides of zoning map, aerial photo, petitioner's amended site plan, and four neighborhood photographs. She read the staff report with recommendation of approval.

Dan Teder, representing the petitioner, stated that the owner Donald Teder, was present and available to answer questions. He informed the Board the petitioner planned to build a two story apartment building with six units, type C. He agreed with staff's report that it was R3W, and asked for the same development standards as

R3U. He mentioned that the surrounding area consisted of co-ops, student rentals, apartments and fraternities. He presented a picture to the Board. He stated that he averaged the set back along Littleton Street, and it was approximately 21'. He reiterated that the request had been amended as per staff's recommendation. He said that there were no objections from neighboring property owners or the City of West Lafayette.

Ralph Webb asked for elaboration on the density of the proposed building. He inquired as to how many more people would be living on that lot.

Dan Teder replied that the building was going from five to six units, which would be 2-3 additional people.

Ralph Webb asked for confirmation on the size of the average setback.

Dan Teder stated that approximately it was 21'. He clarified that a professional surveyor was not hired.

Steve Clevenger asked if that was from the right-of-way or from the curb.

Dan Teder replied that the location of the right –of-way is hard to find.

The Board voted by ballot 6 to grant – 0 to deny approving the request in **BZA-1617—VINTAGE APARTMENTS, LLC**

3. **BZA-1622—CROWN COMMUNICATION, INC. BY DAVID GILMAN:** Petitioner is seeking a special exception to legitimize an existing primary communications tower and to extend it's height to 200' on property located at 3322 E CR 200 N, Fairfield 11(SW)23-4. (UZO 3-2) CONTINUED FROM THE AUGUST MEETING BECAUSE A VARIANCE REQUEST MUST BE FILED AND HEARD  
BEFORE THIS REQUEST.

4. **BZA-1626—CROWN COMMUNICATION, INC. BY DAVID GILMAN:** Petitioner is seeking a variance to allow a 47' setback from the right-of-way of I-65 instead of the 60' required to seek a special exception in BZA-1622 to legitimize an existing primary communications tower located at 3322 E CR 200 N, Fairfield 11(SW) 23-4. (UZO 4-11-7)(b)(2).

Bruce Junius moved to hear and vote on the above-described requests. Ralph Webb seconded.

Krista Trout presented slides of location map, aerial photo, site plan, diagram of proposed tower and seven location photographs. She read the staff report for BZA-

1626 with recommendation of denial. She then read the staff report for BZA-1622 with recommendation of approval.

Krista Trout read into record a letter from Chi Shing Lee, professional engineer, 2855 Highway 261, Newburgh, IN 47630, in favor of the petitions and explaining the structure and the way it would collapse in a disaster.

David Gilman, representing the petitioner, 333 East Ohio Street, Indianapolis, IN, stated the reason for the request is to raise the tower is to allow multiple carriers on one tower, rather than building additional towers. He said that this is not the first time in Tippecanoe County that when attempting to remodel a tower, there was no permit history available on that tower. He stated that the tower was built by Bell South in 1998. He reiterated staff's comment that because there is no permit history, the assumption is the tower was built under the scenario of a public utility. He informed the Board that if the petitions are not approved the tower has to be taken down and moved. He referenced the letter from Chi Shing Lee and mentioned that self-supporting towers are designed to collapse on themselves to thirty percent of its height. He pointed out that a 200-foot tower would need 60 feet of area to fall and I-65 is 100 feet away. He indicated that there is a threat on I-65, approximately every 5 miles, due to all the towers. He said that towers are usually built near highways to be near motorists, for better reception and to be removed from residential areas. He stated that the ordinance requires a sixty-foot setback on I-65 or twenty percent of the tower height, whichever is greater. He gave the example that a 300-foot tower built sixty feet back, would fulfill the ordinance, yet if it collapsed would cross all four lanes of I-65. He said that in the current situation, a collapse would block part of the northbound I-65 lane, only. He expressed his opinion that meeting the ordinance does not justify moving the tower. He agreed with staff's report that it is not a use variance, and would not be harmful to surrounding property owners. He stated that meeting the ordinance would create a situation that is more harmful to the public, than the current set up. He said that this is not a structure that people would be living in, and the setbacks do not commonly apply to towers as they would to structures that have residents. He stated that the towers are built to more stringent safety standards than residential homes or commercial buildings. He expressed his opinion that the strict terms of the ordinance would result in an unusual hardship due to the economic expenses. He reiterated that they are trying to consolidate multiple users on one tower, and not build more. He said the expenses to move the tower would be in the area of \$300,000. He recapped the process needed to move the tower; reapply with all the State, Federal and local agencies, conduct new environment engineering, re-file everything and the tower's current carriers would be shut down during the time of redesigning, and rebuilding. He said that the hardship was not self-imposed. He reiterated that there was not permit history to confirm an error was made. He expressed that the petitioner was not asking or creating a dangerous site. He asked for approval of the variance and to keep the tower in its current location. He referenced the engineer's letter that the extension would not impede or be dangerous to I-65. He reiterated that this is not self-imposed.

Norma Singley, 3322 East 200 North, Lafayette, IN, land owner, stated that she would like the tower to remain in its current location. She pointed out that it does not interfere with any crop operation and if there is ever any land development at the site, this tower location is the least invasive.

Robin Ridgway, 3614 East County Road 200 North, Lafayette, IN 47905, stated that she was contacted a few months ago by a communication company wanting to use her land to build another tower. She pointed out to the company that there was already a tower in existence, and they should use that one. She said she was in support of increasing the height of this tower instead of building an additional tower. She expressed her opinion that the current tower was not in anyone's way and was in a good location. She asked for approval to increase the height and make the best use of an existing tower. She stated that she understood staff's concern that an additional thirteen feet would better protect I-65. She pointed out that an extra thirteen feet is not worth the conniption of moving the tower, the risk of changing the location altogether or adding a second tower.

Ralph Webb asked for clarification that if the existing tower was non compliant and if so, does that put the current landowner in jeopardy of not being able to sell.

Sallie Fahey stated she does not recall telling David Gilman that the tower had to come down if the variance was denied. She mentioned that the pedigree of the tower is unknown, but everyone is reasonably sure that it was installed as a public utility. She said that it should be considered non-complying as opposed to illegal and would not have to come down upon denial. She pointed out the variance is only needed because of the increase in height.

Ralph Webb asked for clarification that if both petitions are denied, the tower can remain in its current location, at its current height, be used for purposes other than public utility and be sold.

Sallie Fahey said she could not confirm that. She stated that she did not know when the second co-locator went on. She said that compliance with the ordinance either by strict compliance or by variance and special exception, is a result of a non public utility co-locator on the tower. She stated that if one or both of the antennae are not public utilities the answer is not known

Ralph Webb reiterated his question of wanting to know if the owner could sell.

Sallie Fahey stated that without the variance and special exception they could keep what they have. Without the variance they cannot increase the height because they do not meet the setback and cannot add additional co-locator that are not public utilities.

Ralph Webb asked if there was any statistics on how many towers have collapsed over the last ten years.

David Gillman replied that since 1999 he has worked on 170 towers for Crown Communication, in fifty-five different counties. He stated that he was aware of only one circumstance two to three years ago in Tipton County, in which a guyed tower fell at its base due to a guy wire snapping. He mentioned other than that one circumstance, the only other towers that have fallen were twenty to thirty year old abandoned, rusted television and radio towers. He stated Crown Communication alone has 10,400 towers in existence with no instances of collapse. He said that they have engineers put their design requirements in layman's terms so the public can understand them. He recapped the manner in which towers fall. He restated that in Crown Communication's experience there have been no collapses. He referenced staff's report citing the variance is required or the tower must be moved. He reiterated that the tower is not owned, used or operated by a public utility and never will be. He explained that everyone involved was a for profit company and all leases were long term. He pointed out that if it was built as a public utility and ownership changes, he was not sure if it was grandfathered in, but that it never met setbacks from day one. He stressed that there was no documentation to determine if setbacks were attempted to be met and miscalculated, or not attempted at all. He said that the biggest concern is not to take the tower down.

Bruce Junius asked how Tippecanoe County compared to other counties in terms of setback requirements.

David Gilman stated that most of the counties along I-65 require the height of the tower to determine the setback size. He gave an example of this as being the tower height plus fifty feet. He stated that any tower built prior to 1999 was sixty feet and there are many of these from Lafayette to Indianapolis alone.

Bruce Junius asked for clarification that anything built now would be tower height plus fifty feet.

David Gilman stated it would depend on the county, but that is the requirement for the majority of the counties.

Ralph Webb said he wanted to revisit the issue of ownership. He asked who currently owned the tower and if Crown Communication backed out, who is responsible for dismantling it.

David Gilman said that as far as he knows Bell South still owns the tower and holds the land lease. Crown Communications has assumed management of the lease. He informed the Board that he does not know if Crown Communications has actually paid for the structure or paid for the right to lease it. He stated that he did not know who would pay for removing the tower, but did not think Crown Communications would. He indicated that Bell South would probably also say it was not their responsibility, and that situation would be a very sticky legal battle.

Steve Clevenger asked if a public utility tower was built today, if it would have to meet the sixty-foot setback.

Sallie Fahey stated that there would not be a setback requirement because under Indiana law and the ordinance public utilities are not regulated by zoning but by the IURC. She said that the most logical answer in regard to this tower is that it was, or everyone assumed it was, an IURC regulated utility when it was installed and the setbacks did not apply. She said that what is regulated by zoning, even for public utilities, is the land owner regarding the second principal use building on the property. She said that if it was a utility easement then there is not effectively a division of the land. She said that if there is a lease, then that is a division of the land. She stated that because this is an easement that is another clue that everyone thought this was a public utility when installed. She pointed out the section of the staff report that states the tower would have to be removed. She clarified that the clause meant if the tower were heightened, it would have to be removed. She referenced David Gilman's earlier comment that a 300-foot tower at a sixty-foot setback is more dangerous than a 200-foot tower with a forty-seven foot setback. She suggested that the Board might want to look at that in the ordinance.

Bruce Junius pointed out if there are a lot of situations in Indiana that are similar and built for the same reason than it would not make sense not to do it. He stated he would hate to see that Tippecanoe County was the only one that granted these variances.

Sallie Fahey pointed out that when the ordinance was being created research on towers and how they fall determined the twenty percent number and showed that height plus fifty feet was a waste of land.

Mark Hermodson agreed that it would be a waste of land.

Steve Clevenger asked for confirmation that the type of road dictated the size of the setbacks as well.

Sallie Fahey confirmed that was true.

Ralph Webb asked the petitioner what the maximum number of carriers would be if the variance were granted.

Dave Gilman replied four. He mentioned that in Brown County if you want a guyed tower 300 feet tall you would need eleven acres.

The Board voted by ballot 6 to grant –0 to deny, approving the variance in **BZA-1626—CROWN COMMUNICATION, INC. BY DAVID GILMAN**

The Board voted by ballot 6 to grant –0 to deny, approving special exception **BZA-1622—CROWN COMMUNICATION, INC. BY DAVID GILMAN.**

Mark Hermodson stated that unless any member has an objection, the chair will order the findings of each member casting a vote for the majority decision of the Board to be the collective findings of the Board in support of the decision of the Board. Hearing none, it is so ordered.

#### **IV. ADMINISTRATIVE MATTERS**

*Moved to New Business*

#### **V. ADJOURNMENT**

Bruce Junius moved to adjourn the meeting. Ralph Webb seconded and the motion carried by voice vote.

The meeting adjourned at 8:40 P.M.

Respectfully submitted,



Michelle D'Andrea  
Recording Secretary

Reviewed by,



Sallie Dell Fahey  
Assistant Director